IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

APPEAL NO. 538 OF 2004
IN
NOTICE OF MOTION NO.1633 OF 2004
IN
SUIT NO.116 OF 1998
IN
PETITION NO.275 OF 1998

Smt. Rohini Pradyumna Kapadia .. Appellant

v/s.

1. Smt.Amita Kulinchandra Motiwala
& ors. .. Respondents

Mr.J.Reis i/by Mr.Y.M.Chaudhary for appellant.

Mr.Virag Tulzapurkar with Mr.Sandeep Parekh i/by M/s.Gordhandas & Fozdar for respondent Nos.1 and 2.

Mr.R.M.Kadam with Mr. Maniar i/by M/s.M.Dhruva & Co. for Respondent No.3.

CORAM : R.M.LODHA AND
J.P.DEVADHAR, JJ.

DATED : 1st September, 2004

P.C.

Heard Mr.J.Reis, the learned counsel for the appellant, Mr.Virag Tulzapurkar, the learned counsel for the respondent No.1 and Mr.R.M.Kadam, the learned counsel for respondent No.3.

2. In the light of the objection raised by the respondents and also the observation made by the learned testamentary Judge that in the testamentary proceedings, the substantive rights of the parties of inheritance or otherwise cannot be decided, the learned counsel for the appellant prays for withdrawal of the appeal with liberty to the

appellant to file substantive suit for her claim and right to the estate of deceased Hirabai and prayer for interim relief therein.

3. The learned counsel appearing for the respondents have no objection to the course suggested by the learned counsel for the appellant.

4. Appeal is allowed to be withdrawn.

5. For a period of three weeks from today, the respondent No.3 is restrained from demolishing the subject property.

6. Needless to say that in the event of the appellant filing the substantive suit for her claim and right to the estate of the deceased Hirabai and the application for interim relief made therein, such application for interim relief shall be considered on its own merits uninfluenced by the impugned order or our ad hoc restraint order to the respondent No.3.

Certified copy expedited.

(R.M.LODHA, J.)

(J.P. DEVADHAR, J.)